



ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF INVESTIGATION

SA 16-250

SUPPLEMENTAL REPORT

CASE NAME: MIGUEL SILICEO & CARY TONG

CLASSIFICATION: OFFICER MISCONDUCT

TYPE: SUPPLEMENTAL – VIDEO EVIDENCE REVIEW

AGENCY: FULLERTON POLICE DEPARTMENT

On March 14, 2016, at approximately 0715 hours, Orange County District Attorney Investigator RICH AYRES and I met with Fullerton Police Department (FPD) Captain SCOTT RUDISIL, FPD Internal Affairs Sergeant ROB JAMES and FPD Internal Affairs Sergeant TIM PETROPULOS regarding the investigation into the misconduct allegations regarding FPD Officer MIGUEL SILICEO and FPD Officer [REDACTED]

JAMES said the FPD implemented the Body Worn Camera (BWC) program around February 2015, approximately four months prior to the July 9, 2015, incident. When an officer activated the BWC there was a 30 second delay during which the BWC recorded video but not audio.

JAMES indicated the city of Fullerton had cameras in the area of 100 West Amerige Avenue, however the recordings were only retained for a six month period and the video from July 9, 2015, was no longer available. JAMES previously viewed the video for the date and time of the incident and found it had not captured any of the incident.

Video Canvass

On April 1, 2016, I canvassed the businesses in the area of 100 West Amerige Avenue, Fullerton for security cameras. The following businesses were contacted.

Fullerton Oral Surgery, 113 West Amerige Avenue – The location had security cameras. The footage was only retained for 30 days.

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Ace Hardware, 117 West Commonwealth Avenue – The location had security cameras. There were no cameras facing the incident location.

Mo's Fullerton Music, 121 North Harbor Boulevard – The location had security cameras inside the store only.

No other businesses in the area had security cameras.

FPD BWC Videos

There were five FPD BWC videos which recorded parts of the July 9, 2015, incident and arrest of VICTOR SERRANO and LUIS DIAZ. Four of the videos were initially obtained during the discovery process. The videos were for the following FPD officers:

- 1) Officer [REDACTED] – 26 minutes in length, entitled "148 - [REDACTED]."
- 2) Officer MICHAEL BOVA – 3 minutes in length, entitled "390 - Bova."
- 3) Officer EDWARD LEMOINE – 5 minutes in length, entitled "390.2 - Lemoine."
- 4) Corporal DAVID BECERRA – 5 minutes in length, entitled "AXON Body Video 2015-07-09 0226 - Becerra."
- 5) Officer MIGUEL SILICEO - 9 minutes in length, entitled "AXON Body Video 2015-07-09 0226 - Siliceo." SILICEO's video was never provided and had since been deleted.

On March 24, 2016, an additional FPD BWC video was obtained from Sergeant ROB JAMES through LISA NEAL. I had requested any other BWC videos from officers who had been booking in the FPD jail on July 9, 2015, during the time frame when SILICEO and [REDACTED] were in the jail. The BWC video was from the BWC of FPD Officer RICKY REYNOSO who transported a prisoner to the FPD jail for a FPD Canine Officer. The video was dated July 9, 2015, and ran from 0241 hours to 0311 hours. It included video from inside the FPD jail while SILICEO and [REDACTED] were in the jail. The video was entitled "Traffic Stop."

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BWC Video Classification and ReclassificationOfficer SILICEO's BWC Video (July 9, 2015 from 0226 to 0235 hours)

SILICEO's BWC video was never provided during the discovery process. The Evidence Audit Trails for the BWC videos were later provided by Sergeant ROB JAMES.

The Audit Trail indicated the SILICEO activated his BWC on July 9, 2015, at 0226 hours. The recording ended at 0235 hours. It was uploaded into the Evidence.com storage system at 0507 hours. There was no indication the video had been viewed by SILICEO or anyone else.

The video was initially uploaded as uncategorized. Categories for BWC videos at the time of the incident included:

- Arrest
- Beginning / End of Shift
- Citations
- Investigations
- Officer Injury
- On View Activity
- Pending Review
- Restricted
- Traffic Collisions
- Training Demo
- Use of Force

On December 8, 2015, at 1140 hours, FPD Captain JOHN SIKO sent an email to all FPD Watch Commanders and Sworn Supervisors regarding the large number of BWC video recordings in storage with Evidence.com which were uncategorized. Uncategorized videos were automatically set as Do Not Delete and would be retained forever. The email directed supervisors to ensure all uncategorized BWC videos were re-categorized with the correct category by the end of December 2015. The email included instructions for re-categorizing the videos with the following updated list of categories:

- Beginning / End of Shift

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- Citations
- Exemplary
- Investigations
- Major Crimes / Investigations
- On View Activity
- Pending Review
- Radio Calls

Also included in Captain SIKO's email was a list of FPD officers with uncategorized BWC videos. There were 127 FPD officers with uncategorized BWC videos in the Evidence.com system. The number of uncategorized videos per officer ranged from one video to 1735 videos. SILICEO had 636 uncategorized videos. Of the 127 FPD officers with uncategorized BWC videos, SILICEO ranked #14.

On December 14, 2015, at 1138 hours, FPD Sergeant DANIEL CASTILLO sent an email to FPD Watch Commanders and Sworn Supervisors indicating the total number of uncategorized BWC videos had been reduced from 25,000 to 16,488. According to the list provided, SILICEO still had 636 uncategorized BWC videos.

On December 23, 2015, between 0838 hours and 1006 hours, SILICEO re-categorized 427 BWC videos including the video of the July 9, 2015, incident. 391 of the videos were re-classified as Radio Calls. 35 of the videos were reclassified after they were viewed by SILICEO. According to the Audit Trail, the video recording of the July 9, 2015, incident was reclassified by SILICEO on December 23, 2015, at 0946 hours as a Radio Call. He did not view the video.

The order of SILICEO's re-categorization of his BWC videos was as follows:

December 23, 2015 at 08:38:30 –SILICEO began the reclassification process (#991).

- 08:38:30 to 08:45:09 (#991-#626) – SILICEO reclassified 183 videos to "Radio Calls."
- 08:47:25 (#617-#595) – SILICEO began watching videos and reclassified 5 videos with various categories and added some case numbers.

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- 09:05:38 to 09:10:58 (#594-#273) – SILICEO reclassified 161 videos to “Radio Calls.”
- 09:11:43 (#272-#209) – SILICEO began watching videos and reclassified 13 videos with various categories and added some case numbers.
- 09:35:20 to 09:35:23 (#208-#147) - SILICEO reclassified 31 videos to “Radio Calls.”
- 09:36:03 to 09:45:33 (#146-#123) - SILICEO began watching videos reclassified 5 videos with various categories and added some case numbers.
- 09:46:38 to 09:46:39 (#122-#91) - SILICEO reclassified 16 videos to “Radio Calls.”
The July 9, 2015 incident was reclassified at 09:46:38 (#102/#101).
- 09:46:56 to 10:06:13 (#90-#32) - SILICEO began watching videos and reclassified 12 videos with various categories and added some case numbers.
- SILICEO ended the reclassification process at 10:06:13 (#32)

On July 9, 2015, the following BWC video retention periods were in effect:

FPD BWC Categories and Retentions (effective 2-1-2015)

- Uncategorized- until manually deleted.
- Arrest- 2 years.
- Beginning/End of shift- 180 days.
- Citations- 180 days.
- Investigations- 2 years.
- Officer injury- until manually deleted.
- On view Activity- 180 days.
- Pending review- until manually deleted.
- Restricted- until manually deleted.
- Traffic collisions- 366 days.
- Training demonstrations- 4 weeks.
- Use of force- until manually deleted.

On December 8, 2015, prior to SILICEO’s re-categorization efforts, the following retention periods were put into effect:

BWC Categories and Retentions (effective 12-8-2015)

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- Uncategorized- default category set-up by evidence.com (CANNOT BE DELETED)
- Arrest- 2 years.
- Start/End of Shift - 90 days.
- Citations - 180 days.
- Investigations – 18 months.
- On View Activity - 180 days.
- Admin/Supervisory Review - Until manually deleted.
- Restricted - Until manually deleted.
- Traffic Collisions - 366 days.
- Training Demonstrations – 4 weeks.
- Radio Calls - 180 days.
- Major Crimes/Investigations - Until manually deleted.
- Exemplary - Until manually deleted.

Based on the descriptions provided of the categories, it appeared the July 9, 2015 incident should have been categorized as an Arrest. The description of an Arrest for the purposes of categorization was, "Arrest - to be used when any activity ends in a (n) arrest (including Misd. /FMC citations) and/or jail booking - 2 years". The description of a Radio Call for the purposes of categorization was, "Radio Calls - any call that ends with no written report (i.e. no G.O., no FI, no arrest, and no citation). PAWC's and FA's should be included in this category - 180 days."

SILICEO's BWC video was subsequently deleted by the Evidence.com system on January 12, 2016 at 0213 hours, based on the re-categorization by SILICEO of the video as a "Radio Call" on December 23, 2015.

Based on the categorization of [REDACTED] and LEMOINE's BWC videos as On View Activity, their BWC videos of the incident had the same 180 day retention as SILICEO's BWC video.

Discovery Related to the BWC Video Footage

The SILICEO BWC video was included in a request to the FPD on an OCDA Discovery Request form from the Discovery Clerk – North Court, initials "T/C" on September 10, 2015, with the box checked

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for "All Audio and Video Recordings..." in case 15N05885 regarding VICTOR SERRANO. The discovery was for OCDA Deputy District Attorney TALHA KHAN indicating it was needed by September 4, 2015. The request was typed on August 31, 2015, for the court date of September 11, 2015.

The SILICEO BWC video was also requested on an OCDA Discovery Request form from the Discovery Clerk – North Court, initials "T/C" on September 8, 2015, with the box checked for "All Audio and Video Recordings..." in case 15N05886 regarding LUIS DIAZ. The discovery was for OCDA Deputy District Attorney MAELESA STREET indicating it was needed by September 25, 2015. The request was typed on September 2, 2015, for the court date of October 2, 2015.

The SILICEO BWC video was specifically requested from the FPD on an OCDA Discovery Request form from the Discovery Clerk – North Court, initials "T/C" on November 20, 2015 with the box checked for "All Audio and Video Recordings..." in case 15N05886 regarding LUIS DIAZ. Under the heading "Additional Discovery (if any): Video / Surveillance Tapes – Body Worn Camera of SILICEO" was requested. The discovery was for OCDA Deputy District Attorney ALEXANDER HARRISON indicating it was needed by November 20, 2015. The request was typed on November 18, 2015, for the court date of November 20, 2015.

SILICEO's BWC video was never provided during the discovery process.

On January 26, Sergeant JAMES wrote a memo to Captain RUDISIL regarding the BWC videos from the July 9, , incident. FPD Court Liaison LISA NEAL had accessed all the BWC videos from the incident except for SILICEO's on September 3, 2015. NEAL told JAMES she located the videos by conducting a search of Evidence.com utilizing the GO (case) number. SILICEO's BWC video did not have the case number for the incident listed when it was uploaded.

When LISA NEAL was interviewed NEAL did not remember if she was able to find BWC footage for SILICEO since she completes so many requests. She also related that she can locate the BWC for officers by a "GO" number or report number. If there is no "GO" number she will attempt to find the

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BWC using a date and time of the specific incident or by the officer's name. She was unaware whether or not she searched for SILICEO's BWC in this manner.

BWC Video Descriptions

Officer [REDACTED]'s BWC (02:24:06 to 02:50:24 hours)

[REDACTED] categorized his BWC video as "On View Activity" with the case number 15-44269 as the ID and the title 148 when it was uploaded into the Evidence.com database on July 9, 2015, at approximately 0443 hours. Based on the categorization as On View Activity, the video would be retained by Evidence.com for 180 days.

The video was activated on July 9, 2015, at 02:24:06 hours, facing north from the south sidewalk of Amerige Avenue approximately mid-block. It showed six male civilians behind a female civilian who appeared to be in line for a food trailer being towed by a white full size pickup truck parked along the south curb. A police officer in uniform was standing to the left (west of [REDACTED]). The heads of the individuals were not visible due to the position of the BWC at the beginning of the video. There was no audio for the first 30 seconds of the video.

At approximately 31 seconds elapsed time, the audio began with [REDACTED] telling the subjects, "Someone is going to jail unless (unintelligible)." Four of the males began walking eastbound on the south sidewalk.

The males were later identified as follows. One was LUIS ABEL SERRANO DIAZ wearing tan pants and a short sleeve shirt which appeared to be brown. VICTOR SERRANO was wearing a plaid long sleeve shirt with the sleeves rolled up partially and dark pants. Unknown Subject #1 was wearing a black short sleeve shirt with a collar and dark pants. Unknown Subject #2 was wearing a brown patterned short sleeve shirt and dark pants. They all appeared to be talking at the same time and their gait appeared to be slow, unsteady and weaving as they walked. Their conversation was unintelligible.

At approximately 50 seconds elapsed time, [REDACTED] said, "Hey, you can walk to our jail and go to jail for drunk in public. Keep on talking. Keep on talking."

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As DIAZ got to the parking lot driveway, he turned toward [REDACTED] and said something unintelligible accompanied by an unknown gesture with his right hand toward [REDACTED]. [REDACTED] then walked purposefully toward DIAZ while unknown male voices can be heard saying, "Cary. Cary." DIAZ turned toward [REDACTED] and said, "What the fuck am I doing? I need to talk to this guy right here." DIAZ speech sounded slurred. [REDACTED] responded, "You just talked your friend into going to jail, how about that bud?"

[REDACTED] then approached and addressed SERRANO who was standing on the west side of the apron of the parking lot, telling him to put his hands behind his back. Subject #2 was visible west of SERRANO, standing near the short block wall. SERRANO responded, "Me? Why me? Why me?" As [REDACTED] came within an arm's reach of SERRANO, he turned toward [REDACTED] and then away from him. [REDACTED] started to say, "Anything...whoa, whoa." As [REDACTED] grabbed SERRANO's right wrist, SERRANO formed a fist and appeared to be pulling his right wrist away from [REDACTED].

As [REDACTED] was attempting to arrest SERRANO, DIAZ walked into the video frame westbound and was firmly pushed further west from behind by SILICEO and went out of the video frame. DIAZ was walking perpendicular to SERRANO and [REDACTED] within approximately 2 feet while [REDACTED] was still attempting to handcuff SERRANO. DIAZ appeared to be manipulating his cellular telephone. He was approximately 1 to 1 ½ steps past [REDACTED] when he was pushed by SILICEO. There was no indication on the [REDACTED] video that DIAZ ran, charged or attempted to tackle [REDACTED].

Officer LEMOINE's BWC (0225 to 0230 hours)

LEMOINE's BWC video had the most comprehensive view of DIAZ as he approached [REDACTED] and SERRANO. An associate of DIAZ wearing a short sleeve collared shirt and black pants appeared to be trying to guide DIAZ away from [REDACTED] and SERRANO as he approached. DIAZ used his left arm to shrug off the subject's hands as he continued to approach. DIAZ was walking and came within an arm's length of SERRANO and [REDACTED] before he was pushed by SILICEO. There was no indication on the LEMOINE BWC video that DIAZ ran, charged or attempted to tackle [REDACTED].

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Corporal BECERRA's BWC (0226 to 0231 hours)

BECERRA's BWC video was activated as DIAZ approached [REDACTED] and SERRANO but the view of DIAZ was obscured by BOVA until SILICEO pushed DIAZ and the other subject. BECERRA categorized his BWC video as "Investigations" with the case number 15-44269 as the ID and the title AXON Body Video 2015-07-09 0226 when it was uploaded into the Evidence.com database on July 9, 2015 at approximately 0610 hours. Based on the categorization as Investigations, the video would be retained by Evidence.com for 2 years.

Corporal BECERRA's BWC video was activated as DIAZ approached [REDACTED] and SERRANO but the view of DIAZ was obscured by BOVA until SILICEO pushed DIAZ and the other subject.

Corporal BOVA's BWC (0226 to 0229 hours)

BOVA's BWC video was activated after DIAZ had been pushed and was getting up. BOVA categorized his BWC video as "Arrest" with the case number 15-44269 as the ID and the title 390 when it was uploaded into the Evidence.com database on July 9, 2015 at approximately 0255 hours. Based on the categorization as an arrest, the video would be retained by Evidence.com for 2 years.

BOVA's BWC video was activated after DIAZ had been pushed and was getting up.

Officer REYNOSO's BWC (0241 to 0311 hours)

REYNOSO's BWC video was activated upon his arrival at a FPD Canine officer's traffic stop and warrant arrest. REYNOSO categorized his BWC video as "Arrest" with the case number 15-44270 as the ID and the title Traffic Stop when it was uploaded into the Evidence.com database on July 9, 2015 at approximately 0730 hours. Based on the categorization as an arrest, the video would be retained by Evidence.com for 2 years.

REYNOSO transported the arrestee from the Canine officer's traffic stop to the FPD jail because Canine officers cannot transport prisoners due to the dog being in their vehicle. REYNOSO had his BWC

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video activated throughout his involvement in the traffic stop, transportation and in the FPD jail during the booking process.

When REYNOSO arrived at the jail at approximately 0301 hours, SILICEO and [REDACTED] were also in the jail booking. The three officers engaged in banter and a conversation regarding SILICEO and [REDACTED] arrest. The "415" charge was discussed. For additional information regarding the discussion refer to the Supplemental Report BWC – Transcript – REYNOSO.

Jail Video Malfunction

One of the documents provided by DDA NICHOLS was an email exchange between FPD Chief DAN HUGHES and FPD Detective GARY SIRIN regarding the Jail Video footage for July 9, 2015.

On March 1, 2016, at 1626 hours, Chief HUGHES sent an email to Detective SIRIN entitled "Jail Video for 7/19/15" requesting all jail video for July 9, 2015, between 0230 and 0800 hours.

On March 2, 2016, at 1425 hours, Detective SIRIN replied to Chief HUGHES' email. In the reply email, Detective SIRIN described the problems encountered with the FPD jail video system in detail which rendered the video for July 9, 2015, unavailable.

On March 11, 2016, at approximately 1007 hours, I telephoned OCDA Investigator DAVE WHITE, the Administrative Operations Manager for the Orange County Regional Computer Forensic Laboratory (OCRCFL). I read the language SIRIN used in his email describing the "RAID" format, hard drive crashes and failures to WHITE in order to determine if the video footage could be recovered forensically. WHITE indicated the jail video data would be "unrecoverable" as described.

Axon Evidence.com

The Fullerton Police Department contracted with Axon Evidence.com which was a subsidiary of TASER for their Body Worn Cameras and video storage.

On March 31, 2016, I contacted Evidence.com representative DOUGLAS DIRREN regarding the feasibility of recovering SILICEO's deleted BWC video. According to DIRREN, the Cloud storage for the FPD at the time of the incident was Amazon.com through contract to Evidence.com. DIRREN contacted

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a computer engineer for Amazon who confirmed SILICEO's BWC video was not recoverable once deleted.

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